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03.	11.9.06	The Petitioner, who claims to be Post Graduate Teacher (English)-cum-Counsellor to Respondent No. 1 Tashi Namgyal Academy, has come up for grant of following three reliefs: - (i) Respondent No. 3 be restrained/ prohibited from demanding his resignation. (ii) Respondent No. 2, the Board of Governors of Respondent No. 1, be restrained/ prohibited from terminating his service. (iii) It be declared that he has a right to continue in his regular service. [1.1] His case, in short, is to this effect: - He heard in the evening of 03.08.2006 that a First Information Report has been lodged with the Gangtok Sadar Police Station by some girl students of Class IX of his School. He rushed to the Police Station and came to know that actually the F.I.R. has been filed against him under Sections 342 and 354 of I.P.C., which are bailable offences. He surrendered and was finally released on bail on 04.08.2006. Around	

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		09.00 AM of 04.08.2006 one of the Complainants came to the Police Station along with her mother and expressed desire to withdraw the joint complaint made by her and two others under the premise that some third person had coerced her to sign the F.I.R. which she had signed without reading it and understanding its contents besides without understanding its implications, who also told the Police in presence of a number of persons present there that nothing of the sort as mentioned in the F.I.R. had happened to her. Around 11.30 AM Mothers of remaining two complainants also came to the Police Station and made a prayer for withdrawal of the F.I.R. on similar grounds, which the Police refused on the ground that F.I.R. has already been registered. Respondent No. 3, the Principal of Respondent No. 1, came to his house in the evening of 04.08.2006 and asked him to see him in his office around 2.30 PM of 05.08.2006. He met Respondent No. 3, who demanded that he should tender his resignation immediately or in	

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the event of his failure to comply with this demand the Board of Governors would terminate his services. He wanted to know the grounds on which he was being asked to tender his resignation on which Respondent No. 3 disclosed that since F.I.R. has been registered against him, he could not continue in service. Respondent No. 3 has no authority to demand his resignation without establishing the allegations made against him nor can Respondent No. 2 terminate his services except in accordance with law. He is innocent and has been falsely implicated at the instance of some third person with ill motive to spoil his career.

[2] An interim order was passed by the Court on 7.8.2006 to the effect that his service should not be disturbed by the Respondents until further orders, which was continued on 9.8.2006 until further orders.

[3] Counter Affidavit has been filed on behalf of Respondent Nos. 1, 2 and 3 which has been sworn by the Principal of the Institution, who is

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also Secretary of the Board of Governors. It has been alleged therein to this effect: -

The Petitioner was appointed as student counsellor only on 28.3.2006 who has falsely stated that he has been functioning as student counsellor for the last seven years. He was discreetly reported in regard to the incident of misbehaviour and molestation by the Petitioner with 3 students, who also submitted their written statement (which are not being filed as the contents may be detrimental to the young minds, though they are being filed separately in sealed cover for the perusal of the Court). The Petitioner was apprised of the allegations, who had stated that he is not aware of any such misbehaviour but he would rather tender his resignation as "he had fallen in the eyes of the Principal, Staff and Students". An Internal Enquiry Committee of the Senior Staff was proposed to be set up. The Petitioner was apprised of the same. He took up a stand that he does not want to face that Enquiry

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Committee expressing that it would be awkward for him to do so and reiterated that he would resign. Despite clear cut instructions to him that he should not discuss the allegations in the class-room he discussed which agitated some of the senior students in his favour and challenged the three minor girl students, who left the School campus. Around 7.00 PM of 03.8.2006 two lady Police Officers, Investigating Officers, Renuka Chettri and another officer came to Respondent No. 3 and informed that statements of the students have been taken by the Police and they want to take the Petitioner in Police Custody. The Parents had expressed their concern of what their daughters had reported to them and wanted some action to be taken against the Petitioner through their letter dated 4th August 2006, (copy annexed as Annexure R-1). The Petitioner has not disclosed that he was released on bail only after Respondent No. 3 arrived at the Police Station and after Mani Kumar Subba stood for his surety. The allegations made by the Petitioner against

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Respondent No. 3 are denied, though it is a fact that he was asked to come at 1430 Hrs. on 05.08.2006 in his office. The Petitioner has repeated his offer to resign, when he was asked to face the Internal Enquiry Committee comprising Senior Teachers. The Writ Petition is liable to be dismissed. Sweeping and vague allegations have been made in the Writ Petition. The Petitioner has also not come up with clean hands, who has also suppressed material facts. the Writ Petition is premature inasmuch as no action has been taken so far.

[4] Vide Order dated 9-8-2006 this Court had issued a Rule to show cause as to why an appropriate writ should not be issued or such order or orders, which this Court may deem fit and proper, should not be passed making Rule returnable today.

[5] Despite giving opportunity on 9-8-2006, the Petitioner has not filed his Rejoinder to the

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[9] We appreciate the stand taken by Mr. Wangdi before us that the Respondents intend to proceed only according to law against the Petitioner in relation to the allegations made against him and that after framing of charges against him he will be given Charge-sheet and supporting documents besides after submission of Charge-sheet by the Police the Criminal Court concern will give him copy of the relevant documents. He pressed that this Writ Petition is fit to be dismissed with exemplary cost.

[10] Mr. Joshi could not satisfy us as to what grievances the Petitioner can have before this Court, when the Respondents intend to proceed in accordance with law against him, who is prima facie facing grave allegation of misconduct arising out of the alleged misbehaviour with and molestation of the three girl students of the Institution.

[11] Mr. Joshi failed to show us any statutory provision showing that after registration of the

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Counter Affidavit denying the correctness of the statements made therein.

[6] Mr. S. Joshi, learned Counsel of the Petitioner, made a prayer for extending the date of filing the Rejoinder on the ground that the Respondents be directed to supply him copy of the written statements of the three girl students who have alleged charge of their molestation against the Petitioner.

[7] Heard Mr. Joshi, learned counsel of the Petitioner and Mr. Wangdi, Senior Advocate Counsel appearing on behalf of Respondent Nos. 1, 2 and 3

[8] It is not the case of the Petitioner that the document as contained in Annexure R-1 is false and fictitious document. The Petitioner has also not impleaded the parents of the three students nor has he filed any affidavit of them prima facie to support his statements.

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		F.I.R. by the Police under Section 156 of the Cr. P.C., it can permit withdrawal of the F.I.R. [12] Beyond this, we do not want to say anything except that the Police will proceed with its duty of investigation in relation to the allegations. [13] We also agree that the Petitioner has not come up with clean hands and correct facts and thus we are of the view that this is a fit case in which we should impose exemplary cost upon the Petitioner. [14] We, accordingly, dismiss this Writ Petition with cost of Rs.10,000/-, which has to be deposited by the Petitioner within 90 (Ninety) days from today, which if deposited shall be handed over to the Sikkim State Legal Services Authority. [15] Before parting, it is made clear that any observation made by us shall not be construed to be settler of the issues involved before the the School Authorities.	Received Rs 10,000/- (Ten thousand) only from the Petitioner on 6.12.06 in terms of the order dt- 11.9.2006. A receipt has been handed over to the Petitioner on 6.12.06 6/12/06

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[16] Mr. Wangdi at this stage of our Order comes up with a prayer for vacating the interim order.

[16] With the dismissal of this Writ Petition the interim order has stood automatically vacated.

(Binod Kumar Roy)
Chief Justice

(A.P. Subba)
Judge